IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

SA.No. 602 of 1994(E)

AGAINST THE ORDER DATED 22/10/1993 IN I.A.744/90 IN
AS.43/1990 of SUB COURT, MANJERI
OS.59/1983 of MUNI-MAGI.COURT,PERINTHALMANNA
(O.A.2123/76)
.....

APPELLANT:APPELLANT/PLAINTIFF

ATIYOLI RAMANKUTTY, SON OF CHAMI
AGED 72 YEARS, THAZHEKKODE AMSOM
AND AMMINIKADU DESOM IN PERINTHALMANNA
TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.O.V.MANIPRASAD

RESPONDENT:RESPONDENT/DEFENDANT

NAVOORIPARAMBIL RAMANKUTTY
SON OF CHOZHI, AGED 62 YEARS
THAZHEKKODE AMSOM, AMMINIKADU DESOM
PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SMT.S.JAYASREE

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 24/8 /2007 THE COURT ON 24/08/2007 DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO. 602 OF 1994

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Dated this the 24th day of August, 2007

JUDGMENT

The second appeal is filed challenging the dismissal of the first appeal as barred by time, after dismissing the application filed under section 5 of the Limitation Act to condone the delay. The case in the second appeal is that the Land Tribunal should not have rendered a finding based on O.A.2123/1976 as A.A.138/1987 was pending before the appellate authority challenging that order and as the question of tenancy is not finally decided by the Land Tribunal the judgments of the courts below are to be set aside.

2. It is pointed out by learned counsel appearing for respondent and admitted by learned counsel appearing for appellant that A.A.138/1987 was subsequently dismissed and C.R.P. filed before this court challenging the order of the appellate authorityin A.A.138/1987 was also dismissed. In

such circumstance, as the question of tenancy is finally settled, appellant is not entitled to contend that respondent is not tenant of the plaint schedule property. Therefore appellant is not entitled to the decree for recovery of possession sought for. Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006